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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 KAELI GARNER, *et al.*,

Case No. 2:21-cv-00750-RSL

11 Plaintiffs,

DECLARATION OF Y. MONICA CHAN

12 v.
13

14 AMAZON.COM, INC., a Delaware
Corporation, and AMAZON.COM SERVICES
15 LLC, a Delaware Limited Liability Company,
16

Defendants.

1 Y. Monica Chan declares as follows:

2 1. I am an attorney licensed to practice law in the State of Washington and the State
 3 of New York. I am an attorney at the law firm of Fenwick & West LLP, counsel of record for
 4 Defendants Amazon.com, Inc. and Amazon.com Services LLC. I am familiar with the facts set
 5 forth in this declaration and, if called upon to do so, I could competently testify to those facts.

6 **I. Discovery Relating To Plaintiffs**

7 2. During discovery, Amazon served interrogatories on Plaintiffs seeking, among
 8 other things, information regarding the Alexa audio recordings associated with Plaintiffs'
 9 identified Amazon accounts, including whether (according to Plaintiffs) each recording allegedly
 10 contains a Plaintiff's voice, is private or confidential, was of a conversation, was directed to the
 11 Alexa service, and was specifically referenced and alleged to be at issue in the operative First
 12 Amended Consolidated Complaint ("FACC").

13 3. Plaintiffs refused to substantively respond to these interrogatories. On August 18,
 14 2022, Amazon moved to compel Plaintiffs' responses to these interrogatories seeking in particular
 15 Plaintiffs' identification of their Alexa recordings. (The relevant interrogatories are numbered
 16 5 through 8 or 9. Amazon propounded an additional interrogatory to certain Plaintiffs addressing
 17 their particular allegations in the FACC; therefore, the numbering for the interrogatories varied by
 18 Plaintiff.) In that motion, Amazon explained that only Plaintiffs can identify, for instance, which
 19 recordings contained Plaintiffs' voices and allegedly provided the basis for their claims against
 20 Amazon. Dkt. 106 at 5.

21 4. On October 3, 2022, the Court granted Amazon's motion to compel and ordered
 22 Plaintiffs to "identify all of their audio recordings and annotate the corresponding transcripts to
 23 identify communications at issue in this litigation." Dkt. 123 at 8. In rejecting Plaintiffs' argument
 24 that identifying their recordings was unduly burdensome, the Court found that "[e]ach plaintiff's
 25 familiarity with and use of Alexa will shed light on the adequacy of Amazon's disclosures, the
 26 user's awareness that recordings were made, stored, and reviewed, and the user's control over the
 27 recordings. Each plaintiff will ultimately have to show that communications were improperly
 28 recorded: requiring them to identify the recordings that form the basis of their wiretap claims is

1 therefore entirely proportional to the needs of the case.” *Id.* at 4. The Court ordered Plaintiffs to
 2 provide verified amended interrogatory responses no later than three weeks before their scheduled
 3 depositions. *Id.* at 5.

4 5. On March 22, 2023, Plaintiff Jodi Brust served Amazon with her second amended
 5 interrogatory responses, identifying and annotating only 15 Alexa audio recordings out of the over
 6 8,000 recordings associated with her Amazon account. Attached as **Exhibit 1** is a true and correct
 7 copy of Ms. Brust’s Amended Responses to Amazon’s Interrogatories, dated March 22, 2023.
 8 Plaintiffs took the position that the Court only ordered them to identify the subset of recordings
 9 that they subjectively believe are at issue in this litigation. (Ms. Brust’s interrogatory responses
 10 were not designated confidential. Nonetheless, in an abundance of caution, Amazon has redacted
 11 certain information from the exhibit, such as address, email address, and device serial number.)

12 6. On March 30, 2023, Amazon filed a motion to compel compliance with the Court’s
 13 October 3, 2022 Order. Dkt. 153.

14 7. On June 20, 2023, the Court once again granted Amazon’s motion to compel and
 15 ordered (for the second time) Plaintiffs to: “(1) identify all recordings that contain their voice, in
 16 response to Amazon’s Interrogatory No. 5; (2) further identify the subset of their recordings that
 17 they contend are at issue in this case, in response to Amazon’s Interrogatory Nos. 6 through 8 (and
 18 for some plaintiffs, No. 9).” Dkt. 182 at 2. The Court noted that “Plaintiffs were ordered to
 19 ‘identify all of their audio recordings’ and annotate the transcripts of those recordings to identify
 20 the communications that are at issue in this case.” *Id.*

21 8. Following the Court’s June 20, 2023 Order, each Plaintiff provided amended
 22 interrogatory responses, including identifying which recordings they contend (1) contain a
 23 Plaintiff’s voice, (2) contain an alleged “conversation,” (3) are confidential or private,
 24 (4) correspond to certain Plaintiffs’ allegations of recording in the FACC, and/or (5) are not
 25 directed at the Alexa service. Plaintiffs’ amended interrogatory responses are attached as
 26 Exhibits R-AA to the Declaration of Michael Carty (Dkt. 255-20–Dkt. 255-29).

1 **A. Plaintiffs' Deposition Testimony**

2 9. On August 1, 2023, Amazon's counsel deposed Ms. Brust. Attached as **Exhibit 2**
3 is a true and correct copy of an excerpt from Ms. Brust's deposition transcript.

4 10. On August 8, 2023, Amazon's counsel deposed Plaintiff Jeffrey Hoyt. Attached as
5 **Exhibit 3** is a true and correct copy of an excerpt from Mr. Hoyt's deposition transcript.

6 11. On August 9, 2023, Amazon's counsel deposed Plaintiff Lorlie Tesoriero.
7 Attached as **Exhibit 4** is a true and correct copy of an excerpt from Ms. Tesoriero's deposition
8 transcript.

9 12. On August 15, 2023, Amazon's counsel deposed Plaintiff Ricky Babani. Attached
10 as **Exhibit 5** is a true and correct copy of an excerpt from Mr. Babani's deposition transcript.
11 (Although not designated confidential, in an abundance of caution, Amazon has redacted from the
12 exhibit Mr. Babani's email addresses.)

13 13. On September 20, 2023, Amazon's counsel deposed Plaintiff Michael McNealy.
14 Attached as **Exhibit 6** is a true and correct copy of an excerpt from Mr. McNealy's deposition
15 transcript.

16 14. On September 21, 2023, Amazon's counsel deposed Plaintiff Diane McNealy.
17 Attached as **Exhibit 7** is a true and correct copy of an excerpt from Mrs. McNealy's deposition
18 transcript.

19 15. On September 26, 2023, Amazon's counsel deposed Plaintiff Kaeli Garner.
20 Attached as **Exhibit 8** is a true and correct copy of an excerpt from Ms. Garner's deposition
21 transcript.

22 16. On October 11, 2023, Amazon's counsel deposed Plaintiff Selena Johnson.
23 Attached as **Exhibit 9** is a true and correct copy of an excerpt from Mrs. Johnson's deposition
24 transcript.

25 17. On October 12, 2023, Amazon's counsel deposed Plaintiff Ronald Johnson.
26 Attached as **Exhibit 10** is a true and correct copy of an excerpt from Mr. Johnson's deposition
27 transcript. (Although not designated confidential, in an abundance of caution, Amazon has
28 redacted from the exhibit Mr. Johnson's email address.)

1 18. On January 25, 2024, Amazon's counsel deposed Plaintiff Caron Watkins.
 2 Attached as **Exhibit 11** is a true and correct copy of an excerpt from Ms. Watkins' deposition
 3 transcript.

4 19. Plaintiffs' depositions confirmed that every Plaintiff misidentified voices in Alexa
 5 recordings, including their own voice. In her amended interrogatory responses, Ms. Brust
 6 identified a recording as containing her voice, **Ex. 1** (identifying the recording produced as
 7 AMZ_GARNER_AU_00016054, **Ex. 15** attached hereto, as "Jodi Brust"), but later admitted in
 8 her deposition that it was a recording from the television show "Cougar Town," **Ex. 2** (Excerpt of
 9 Brust Tr.) at 155:15-156:4.

10 20. In his amended interrogatory responses, Mr. Hoyt identified a recording as
 11 containing his voice, but later testified that the recording was in fact of his wife, Ms. Tesoriero.
 12 **Ex. 3** (Excerpt of Hoyt Tr.) at 142:17-143:3. Similarly, in her amended interrogatory responses,
 13 Ms. Tesoriero identified a recording as containing her voice, but upon listening to the recording,
 14 testified that it was in fact her husband. **Ex. 4** (Excerpt of Tesoriero Tr.) at 89:11-90:11.

15 21. Mr. Babani initially identified a recording as containing his voice in his amended
 16 interrogatory responses, but then testified that the recording was of the television. **Ex. 5** (Excerpt
 17 of Babani Tr.) at 86:25-87:23.

18 22. Mr. McNealy testified that "there were ones I couldn't really know if it was me or
 19 not, but most of them, if it's me, it's me, I can tell. But there was a couple I couldn't." **Ex. 6**
 20 (Excerpt of M. McNealy Tr.) at 175:1-7. In her amended interrogatory responses, Mrs. McNealy
 21 initially identified a recording as containing her voice, but then testified that she could not actually
 22 tell whether the voice contained her voice or a television commercial. **Ex. 7** (Excerpt of D.
 23 McNealy Tr.) at 147:8-149:15.

24 23. In her amended interrogatory responses, Ms. Garner initially identified a recording
 25 as containing her voice, but then testified that she did not hear her own voice. **Ex. 8** (Excerpt of
 26 Garner Tr.) at 150:24-152:19.

27 24. Mrs. Johnson listened to a recording and testified that it sounded like her voice, but
 28 after being informed that she had previously annotated that recording as "Plaintiff's daughter

1 speaking” in her amended interrogatory responses (*see* Carty Ex. Y, Ex. A at 22), she testified that
 2 “[i]t sounded like her” daughter. **Ex. 9** (Excerpt of S. Johnson Tr.) at 139:1-22. After listening to
 3 a recording, Mr. Johnson testified that “I can’t distinguish if it’s Trey or myself. It kind of sounds
 4 like me, but I’m not sure.” **Ex. 10** (Excerpt of R. Johnson Tr.) at 122:22-123:13.

5 25. In her amended interrogatory responses, Ms. Watkins identified a recording as
 6 containing her voice, but then testified that she did not in fact know whether it contained her voice,
 7 admitting “I can’t tell what it is or what’s happening.” **Ex. 11** (Excerpt of Watkins Tr.) at 133:8-
 8 134:1.

9 26. Multiple Plaintiffs also testified that they could not identify the speaker in a
 10 recording or identify the content of the recording. For example, during Mrs. Johnson’s deposition,
 11 she listened to recordings and, when asked whether she heard her voice, responded, “[i]t sounded
 12 like me, but I’m not positive,” and “I don’t know if that’s my voice or not.” **Ex. 9** (Excerpt of S.
 13 Johnson Tr.) at 134:3-5, 135:4-5.

14 27. During Mr. McNealy’s deposition, he listened to a recording and, when asked if it
 15 contained his voice, responded, “[t]hat isn’t me. That is not me.” **Ex. 6** (Excerpt of M. McNealy
 16 Tr.) at 129:5-11. After being asked, “[d]o you know who that is,” Mr. McNealy responded, “[n]o,
 17 I don’t. If you play it again, I can try and figure it out” and then “[n]o, I don’t have a clue who
 18 that is.” *Id.*

19 28. During Ms. Brust’s deposition, she listened to a recording and, when asked if it
 20 contained her voice, responded, [REDACTED] **Ex. 2** (Excerpt of Brust Tr.) at 139:16-
 21 22.

22 29. During Mr. Johnson’s deposition, he listened to a recording and was asked “who
 23 did you hear,” and he responded, “I hear -- I heard somebody say ‘Sirius XL,’ I think that’s what
 24 it was, but I don’t know who that is.” **Ex. 10** (Excerpt of R. Johnson Tr.) at 167:2-168:11.
 25 Mr. Johnson was asked whether he recognized any of the voices on the recording and he did not.
 26 *Id.*

27 30. During Ms. Tesoriero’s deposition, she listened to a recording, and after being
 28 asked to identify the speaker, she responded, “I can’t tell, to be honest with you, I can’t tell.” **Ex. 4**

1 (Excerpt of Tesoriero Tr.) at 100:1-19. During his deposition, Mr. Hoyt was asked whether he
 2 recognized the voice on a particular recording, and after asking to hear it again, responded “Yeah,
 3 I can’t -- yeah, I can’t for sure say. One more time. … I can’t conclude one way or another if that’s
 4 me or not.” **Ex. 3** (Excerpt of Hoyt Tr.) at 144:21-145:19.

5 31. These are recordings that Plaintiffs claim were made in their homes by their Alexa-
 6 enabled devices, but even Plaintiffs were unable to accurately identify the voices in those recordings.

7 32. Plaintiffs also identified recordings as “not intended for Alexa” when the recordings
 8 contained the wake-word (typically “Alexa”). Either the recording itself contained the word
 9 “Alexa,” or it was part of a continuing series of commands to Alexa. For instance, Ms. Brust
 10 listened to a recording that she identified as “not intended for Alexa” in her amended interrogatory
 11 responses, but during her deposition she testified that, “[t]his was a conversation with Alexa trying
 12 to get that to happen. I never did get it to happen.” Ms. Brust confirmed that the recording was
 13 directed at Alexa because it was “a continuing conversation with Alexa.” **Ex. 2** (Excerpt of Brust
 14 Tr.) at 205:1-207:8.

15 33. Mrs. McNealy testified that whether something was directed to Alexa depended on
 16 the surrounding context. **Ex. 7** (Excerpt of D. McNealy Tr.) at 163:8-164:22. During
 17 Mr. McNealy’s deposition, he listened to a recording that he had identified as “not directed at
 18 Alexa” in his amended interrogatory responses. He was asked, “[d]o you consider this recording
 19 to be directed at Alexa,” and he responded: “Yes, I guess so. Now, I do. Now that I heard my
 20 sisters say, ‘Hey, Alexa,’ that would be directed at Alexa now, wouldn’t it?” **Ex. 6** (Excerpt of M.
 21 McNealy Tr.) at 140:5-143:13.

22 34. During Mrs. Johnson’s deposition, she testified that a recording that she had
 23 indicated was “not directed at Alexa” in her amended interrogatory responses was in fact directed
 24 at Alexa. **Ex. 9** (Excerpt of S. Johnson Tr.) at 152:2-23. Mrs. Johnson testified, “I just heard
 25 ‘Alexa’. I must not have heard it earlier.” *Id.* Mr. Johnson identified a recording as “not directed
 26 at Alexa” in his amended interrogatory responses but later testified “that was directed at Alexa,”
 27 and acknowledged that he heard himself say “Alexa” in the beginning of the recording. **Ex. 10**
 28 (Excerpt of R. Johnson Tr.) at 145:18-146:14.

1 35. Plaintiffs also misidentified the content of recordings in their discovery responses.
 2 In her amended interrogatory responses, Ms. Brust identified a recording as “of a conversation,”
 3 but later testified that “I heard only static.” **Ex. 2** (Excerpt of Brust Tr.) at 207:10-208:14 (listening
 4 to AMZ_GARNER_AU_00022561). After listening to a different recording she had initially
 5 identified as “of a conversation” in her amended interrogatory responses, Ms. Brust admitted that
 6 she could not make out what the recording said. *Id.* at 226:16-227:2.

7 36. During Mrs. McNealy’s deposition, she was asked about a recording that, according
 8 to paragraph 68 of the FACC, was allegedly about cancer treatment. But Mrs. McNealy testified
 9 that, in fact, the recording was “me talking about my need to hydrate better,” and she confirmed
 10 that she heard nothing about cancer treatment. **Ex. 7** (Excerpt of D. McNealy Tr.) at 225:11-
 11 226:11.

12 37. In the FACC, the Johnsons alleged that there were certain recordings of “personal
 13 conversations between [Mr. and Mrs. Johnson] about sexual intercourse” and the two of them
 14 “engaging in sexual intercourse.” FACC ¶ 70. Mrs. Johnson was asked to identify those
 15 recordings, and in her amended interrogatory responses, she identified a June 19, 2020 recording.
 16 Carty Ex. Y, Ex. A at 15. But during her deposition, Mrs. Johnson listened to the recording and
 17 was asked whether “this is a conversation about sex”; she responded: “I can’t. I don’t know,” and
 18 further testified that the recording “sounds like my grandson” and that “I can’t make out the
 19 recording on this.” **Ex. 9** (Excerpt of S. Johnson Tr.) at 182:14-187:9.

20 38. Similarly, during Mr. Johnson’s deposition, he testified that a recording he had
 21 identified as a [REDACTED] (Carty Ex. X, Ex. A at 1 (referring
 22 to **Ex. 16**, AMZ_GARNER_AU_00153924)) was, in fact, a recording of just a “cough or sneeze.”
 23 **Ex. 10** (Excerpt of R. Johnson Tr.) at 131:21-136:18. When Mr. Johnson was asked, “you didn’t
 24 hear anyone having intercourse in the recording; is that right?,” he responded “No.” *Id.*

25 39. Plaintiffs’ deposition testimony also shows the varied ways that individual
 26 Plaintiffs learned about Alexa audio recordings, “false-wakes,” and human review. Mr. Babani
 27 testified that he heard “rumors” regarding Amazon’s handling of user utterances, but he used Alexa
 28

1 anyway because he “didn’t think too much of it.” **Ex. 5** (Excerpt of Babani Tr.) at 89:4-10; 91:4-
2 10, 93:2-5, 93:16-19.

3 40. Ms. Brust testified that she “saw on the news and on Facebook that Amazon had
4 been recording and keeping these recordings,” and “third parties having access to this data.” **Ex. 2**
5 (Excerpt of Brust Tr.) at 18:19-20, 23:22-24.

6 41. Ms. Garner testified that she knew about false-wakes because her [REDACTED]
7 [REDACTED] Alexa turn on [and] she would pause what she was saying to me
8 and say Alexa stop because Alexa was waking without intentionally being awoken.” **Ex. 8**
9 (Excerpt of Garner Tr.) at 148:1-4.

10 42. Ms. Tesoriero testified about seeing a “comedy” about how “you have to pronounce
11 the name Alexa correctly” on YouTube. **Ex. 4** (Excerpt of Tesoriero Tr.) at 40:7-22.

12 43. Plaintiffs’ recordings also demonstrate that many suspected false-wake recordings
13 are either unintelligible or a just few words taken out of context. Ms. Tesoriero identified a
14 recording of the word “oh” as not directed at Alexa, but during her deposition she testified that
15 “oh” was actually her response to a question from Alexa. **Ex. 4** (Excerpt of Tesoriero Tr.)
16 at 110:15-112:13 (listening to **Ex. 13**, AMZ_GARNER_AU_00012829).

17 44. During Mr. McNealy’s deposition, he listened to a recording and testified that
18 “I don’t even know what that was. It was just a noise. It was just like a computer tone.” **Ex. 6**
19 (Excerpt of M. McNealy Tr.) at 137:21-138:4 (listening to **Ex. 12**,
20 AMZ_GARNER_AU_00163690).

21 45. Many Plaintiffs testified that they continued using Alexa after the FACC was
22 filed. Mr. Hoyt testified that he still uses Alexa. **Ex. 3** (Excerpt of Hoyt Tr.) at 24:9-10. Ms. Brust
23 admitted that “she has made voice commands to the Identified Alexa-enabled Device since this
24 lawsuit was filed.” **Ex. 32** at 4. Mrs. McNealy testified that she last used Alexa “the night before
25 I left for -- to come to New York” for her deposition. **Ex. 7** (Excerpt of D. McNealy Tr.) at 22:1-8.
26 Ms. Garner admitted that she has made voice commands to Alexa since this lawsuit was filed.
27 **Ex. 34** at 4-5. Mr. Babani and Mr. McNealy confirmed that they have continued using Alexa since
28 this lawsuit was filed. **Ex. 6** (Excerpt of M. McNealy Tr.) at 21:8-22:6; **Ex. 5** (Excerpt of Babani

1 Tr.) at 21:14-16. Ms. Tesoriero confirmed that she has continued using Alexa but that she “limit[s]
 2 the amount.” **Ex.4** (Excerpt of Tesoriero Tr.) at 21:15-19.

3 **B. Audio Recordings**

4 46. On a USB device filed with this declaration, Amazon has provided certain audio
 5 recordings from Plaintiffs’ identified Amazon accounts for the Court’s review.

- 6 a. The recording labeled **Exhibit 12** is a recording from Mr. McNealy’s
 7 identified Amazon account, produced as AMZ_GARNER_AU_00163690,
 8 which contains no words.
- 9 b. The recording labeled **Exhibit 13** is a recording from Mr. Hoyt’s identified
 10 Amazon account, produced as AMZ_GARNER_AU_00012829.
- 11 c. The recording labeled **Exhibit 14** is a recording from Ms. Brust’s identified
 12 Amazon account, produced as AMZ_GARNER_AU_00022561, which
 13 contains static.
- 14 d. The recording labeled **Exhibit 15** is a recording from Ms. Brust’s identified
 15 Amazon account, produced as AMZ_GARNER_AU_00016054, which
 16 contains audio from a television show, but that Ms. Brust identified as her
 17 voice in her amended interrogatory responses. *See Ex. 1* at 21.
- 18 e. The recording labeled **Exhibit 16** is the recording from Mrs. Johnson’s
 19 Amazon account produced, as AMZ_GARNER_AU_00153924, that Mr.
 20 Johnson identified in his amended interrogatory responses as a [REDACTED]
 21 [REDACTED] but that in fact reflects only a cough.
- 22 f. The recording labeled **Exhibit 17** is a recording from Ms. Tesoriero’s
 23 identified account, produced as AMZ_GARNER_AU_00012910, which
 24 reflects Ms. Tesoriero saying, [REDACTED]
- 25 g. Ms. Garner purchased an Alexa-enabled Fire TV stick on amazon.com and
 26 registered the device to her own Amazon account in November 2017. **Ex. 8**
 27 at 51:22-52:3, 55:7-11, 60:14-19; *see also* Declaration of Leila Rouhi
 28 ¶ 124(b). [REDACTED]

1 [REDACTED] labeled as **Exhibit 18**, was produced as
 2 AMZ_GARNER_AU_00176558. [REDACTED] labeled **Exhibit**
 3 **19**, was produced as AMZ_GARNER_AU_00176559; [REDACTED]
 4 [REDACTED] labeled as **Exhibit 20**, was produced
 5 as AMZ_GARNER_AU_00176560.

6 47. In their Motion for Class Certification, Plaintiffs claim that “[o]n January 3, 2020,
 7 Plaintiff Ronald Johnson’s private communication in his home was intercepted, transcribed, and
 8 stored by Alexa,” and they cite “a recording of Plaintiff Ronald Johnson after intercourse.”
 9 Mot. at 6. I have personally reviewed the recordings that correspond to the identified Amazon
 10 account through which Mr. Johnson used Alexa. **Exhibit 21** is an excerpt of the document
 11 produced as AMZ_GARNER_AU_ANN_00002619, which reflects the transcripts and responses
 12 for some of the recordings in the Johnsons’ identified Amazon account, as well as Mr. Johnson’s
 13 corresponding interrogatory responses for the recordings. [REDACTED]

14 [REDACTED] **Ex. 21.** These recordings are also included on the USB device.

15 a. The recording labeled **Exhibit 22** is a recording dated January 3, 2020 and
 16 produced as AMZ_GARNER_AU_00154201, [REDACTED]
 17 [REDACTED]

18 [REDACTED] *See* Carty Ex. X at Ex. A,
 19 4 (identifying **Ex. 22**, AMZ_GARNER_AU_00154201 as [REDACTED]
 20 [REDACTED]

21 b. The recording labeled **Exhibit 23** is a recording dated January 3, 2020 and
 22 produced as AMZ_GARNER_AU_00154200, [REDACTED]
 23 [REDACTED]

24 c. The recording labeled **Exhibit 24** is a recording dated January 3, 2020 and
 25 produced as AMZ_GARNER_AU_00154202, [REDACTED]
 26 [REDACTED]

1 48. I understand that AMZ_GARNER_00073387 [REDACTED]
2 [REDACTED]
3 [REDACTED] Rouhi Decl. ¶ 127. [REDACTED]
4 [REDACTED]
5 [REDACTED] *Id.* [REDACTED]
6 [REDACTED]
7 [REDACTED] are also included
8 on the USB device.

9 a. The recording labeled **Exhibit 25** was produced as
10 AMZ_GARNER_AU_00159884 and has a timestamp of 03/11/2018
11 22:54:30 UTC. [REDACTED]
12 [REDACTED]
13 [REDACTED] Carty Ex. T at 49.

14 b. The recording labeled **Exhibit 26** was produced as
15 AMZ_GARNER_AU_00159994 and has a timestamp of 03/18/2018
16 18:05:10 UTC. [REDACTED]
17 [REDACTED] Carty Ex. T
18 at 50.

19 c. The recording labeled **Exhibit 27** was produced as
20 AMZ_GARNER_AU_00166345 and has a timestamp of 01/13/2021 23:34
21 UTC. [REDACTED]
22 [REDACTED] Carty Ex. U at 31.

23 d. [REDACTED]
24 [REDACTED]
25 i. The recording labeled **Exhibit 28** was produced as
26 AMZ_GARNER_AU_00162261 and has a timestamp of
27 11/03/2019 02:18:16 UTC. [REDACTED]
28 [REDACTED]

1 ii. The recording labeled **Exhibit 29** was produced as
 2 AMZ_GARNER_AU_00166343 and has a timestamp of
 3 01/13/2021 23:21 UTC. [REDACTED]
 4 [REDACTED]

5 49. **Exhibit 30** is an excerpt of the document produced as
 6 AMZ_GARNER_AU_ANN_00000335, which reflects the transcripts and responses for some of
 7 the recordings in Ms. Tesoriero's identified Amazon account, as well as Ms. Tesoriero's
 8 corresponding interrogatory responses for the recordings.

9 C. **Plaintiffs' Discovery Responses And Production**

10 50. On May 16, 2022, Plaintiff John Dannelly, a former named Plaintiff in this matter,
 11 served his Responses and Objections to Amazon's First and Second Set of Interrogatories.
 12 On October 3, 2022, Mr. Dannelly voluntarily withdrew from this litigation and dismissed his
 13 claims against Amazon with prejudice. Dkt. 122. Attached as **Exhibit 31** is a true and correct
 14 copy of Plaintiff John Dannelly's Responses and Objections to Defendants' First and Second Set
 15 of Interrogatories. (Mr. Dannelly's interrogatory responses were not designated confidential.
 16 Nonetheless, in an abundance of caution, Amazon has redacted individual information from the
 17 exhibit, such as any address, email address, and device serial number.)

18 51. On February 17, 2023, Plaintiff Jodi Brust served her Responses and Objections to
 19 Amazon's First Set of Requests for Admission. Attached as **Exhibit 32** is a true and correct copy
 20 of Plaintiff Jodi Brust's Responses and Objections to Defendants' First Set of Requests for
 21 Admission.

22 52. On February 17, 2023, Plaintiff Diane McNealy served her Responses and
 23 Objections to Amazon's First Set of Requests for Admission. Attached as **Exhibit 33** is a true and
 24 correct copy of Plaintiff Diane McNealy's Responses and Objections to Defendants' First Set of
 25 Requests for Admission. (Mrs. McNealy's responses to the Requests for Admission were not
 26 designated confidential. Nonetheless, in an abundance of caution, Amazon has redacted individual
 27 information from the exhibit, such as any email address.)

1 53. On February 17, 2023, Plaintiff Kaeli Garner served her Responses and Objections
 2 to Amazon's First Set of Requests for Admission. Attached as **Exhibit 34** is a true and correct
 3 copy of Plaintiff Kaeli Garner's Responses and Objections to Defendants' First Set of Requests
 4 for Admission. (Ms. Garner's responses to the Requests for Admission were not designated
 5 confidential. Nonetheless, in an abundance of caution, Amazon has redacted individual
 6 information from the exhibit, such as any email address.)

7 54. Attached as **Exhibit 35** is a true and correct copy of a screenshot of the "Manage
 8 Your Alexa Data" page in the Alexa App that Mr. Hoyt produced as AMAZON-PLTFS_0005380.

9 55. Attached as **Exhibit 36** is a true and correct copy of a screenshot of the "Help
 10 improve Alexa" page in the Alexa App that Mr. Hoyt produced as AMAZON-PLTFS_0005385.

11 56. Attached as **Exhibit 37** is a true and correct of an email that Mr. Hoyt received,
 12 titled "Keep up with Alexa – Privacy Edition," and produced as AMAZON-PLTFS_0005139.

13 **II. Amazon Alexa Arbitrations**

14 57. In 2020, a plaintiff's law firm solicited claimants on social media and partnered
 15 with the Quinn Emanuel and Keller Lenkner law firms to file individual arbitration claims against
 16 Amazon on behalf of over 70,000 alleged Alexa users who claimed they were recorded by the
 17 Alexa service without their permission. Attached as **Exhibits 38-39** are true and correct copies of
 18 social media advertisements for arbitration claims against Amazon about Alexa recording.

19 58. [REDACTED]
 20 [REDACTED]
 21 [REDACTED] Below I discuss specific rulings in final arbitration awards, which have been
 22 redacted to protect names of the individual claimants.

23 59. [REDACTED]
 24 [REDACTED] Attached
 25 as **Exhibit 40** is a true and correct copy of [REDACTED]
 26 [REDACTED] which was produced as AMZ_GARNER_00073483. [REDACTED]
 27 [REDACTED]
 28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 60. [REDACTED]
5 [REDACTED]
6 Attached as **Exhibit 41** is a true and correct copy of [REDACTED]
7 [REDACTED] which was produced as AMZ_GARNER_00073533.
8 a. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 b. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 61. [REDACTED]
11 [REDACTED] Attached as
12 Exhibit 42 is a true and correct copy of [REDACTED]
13 [REDACTED] which was produced as AMZ_GARNER_00073487. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 62. [REDACTED]
22 [REDACTED] Attached
23 as Exhibit 43 is a true and correct copy of [REDACTED]
24 [REDACTED] which was produced as AMZ_GARNER_00073560. [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 63. [REDACTED]

4 [REDACTED] Attached as **Exhibit 44**
5 is a true and correct copy of [REDACTED] which
6 was produced as AMZ_GARNER_00073521. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 64. [REDACTED]
14 [REDACTED] Attached as
15 **Exhibit 45** is a true and correct copy of [REDACTED]
16 [REDACTED] which was produced as AMZ_GARNER_00073476. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 65. [REDACTED]
23 [REDACTED] Attached as **Exhibit 46** is a true and
24 correct copy of [REDACTED] which was produced
25 as AMZ_GARNER_00073490. [REDACTED]

26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]

4 **III. Media Coverage Of Alexa**

5 66. Since its inception, Amazon's Alexa service has been the subject of continuous,
 6 widespread news coverage and commentary, with various local, national, and international
 7 publications reporting on matters including voice recordings, human review, and Alexa's privacy-
 8 oriented features.

9 67. On November 11, 2014—within a week of Amazon's announcement of the launch
 10 of its first Echo device—The Washington Post published an article entitled *How Closely is*
 11 *Amazon's Echo Listening? Six Questions about the Amazon Echo and Your Privacy*. A true and
 12 correct copy of that article is attached as **Exhibit 47**. That article stated that Echo devices “records
 13 snippets of what you say in the privacy of your home and stores it on Amazon’s servers.” *Id.* at
 14 ‘728. It reported that Echo devices “listen constantly” for the wake word and “stream whatever
 15 [users] say” after hearing the wake word “to the Amazon cloud” while “also go[ing] back and
 16 send[ing] a few seconds before the wake word to the cloud.” *Id.* at ‘729. The article further
 17 reported that “the things [that users] ask Echo [devices] are recorded and kept on the company’s
 18 servers unless [users] delete them” by “go[ing] into the ‘History’ settings in the companion app”
 19 to “view all [their] queries and nix the ones [they] don’t want[.]” *Id.* at ‘730.

20 68. Since that time, news outlets and publications have routinely published reports and
 21 commentary related to Alexa-enabled devices, including facts about their functionality and
 22 features. For example, in December 28, 2016, Fox News reported that “the Echo speaker is always
 23 listening for Alexa voice commands[,]” and Amazon “provides some options to manage … and
 24 review” voice recordings, including “delet[ing] all voice recordings associated with [an] Amazon
 25 account for each … Alexa-enabled product[.]” A true and correct copy of that article is attached
 26 as **Exhibit 48**.

27 69. On April 10, 2019, Bloomberg published an article discussing human review of
 28 Alexa recordings, entitled “Amazon Workers Are Listening to What You Tell Alexa.” This piece

1 reported that “[a] global team [of employees at Amazon] reviews audio clips [captured by Alexa-
 2 enabled devices] in an effort to help the voice-activated assistant respond to commands.” A true
 3 and correct copy of that Bloomberg article is attached as **Exhibit 49**. While the information
 4 contained within this article was already public, the Bloomberg piece garnered considerable public
 5 attention, which in turn, resulted in a news cycle dominated by Alexa-related coverage. Indeed,
 6 on April 11, 2019, just a day after the release of the Bloomberg article, Business Insider published
 7 an article entitled: “The media is freaking out about Alexa privacy, but here’s the truth.” This
 8 article reported the already-well-disclosed fact that Alexa-enabled devices “send [] recordings to
 9 Amazon’s cloud to process in order to give [users] a response[,]” as well as Amazon’s practice of
 10 employing human review and annotation for a minuscule set of recordings in an effort to improve
 11 Alexa-enabled devices ability to understand and respond to requests. A true and correct copy of
 12 that Business Insider article is attached as **Exhibit 50**. The Bloomberg article was picked up and
 13 republished by many local newspaper and radio stations around the country.

14 70. A June 26, 2019 USA Today article, entitled “Amazon is watching, listening and
 15 tracking you. Here’s how to stop it,” reported that “Amazon stores recordings of every interaction
 16 you’ve had with Alexa,” and that such recordings were “available for listening in the smartphone
 17 app, … by clicking Settings and Alexa Privacy.” This piece further explained that once “[t]here,
 18 [users] can read and listen to [] past conversations with Alexa, delete all or individual
 19 recordings[,]” or “have Alexa do it, by saying ‘Alexa, delete everything I said today.’” A true and
 20 correct copy of that article is attached as **Exhibit 51**.

21 71. The high-profile coverage of Alexa-enabled devices following the Bloomberg
 22 article was accompanied by a series of consumer-initiated litigations alleging that Alexa-enabled
 23 devices unlawfully record consumers without their consent in violation of state wiretap laws. *See*,
 24 *e.g., Hall O’Neill v. Amazon.com, Inc. et al.*, No. 2:19-cv-00910-RAJ-MLP (W.D. Wash.); *Hayley*
 25 *Charmaine Tice v. Amazon.com, Inc. et al.*, No. 5:19-cv-01311-SVW-KK (C.D. Cal.);
 26 *Amazon.com Alexa Cases*, No. JCCP 5069 (Alameda County, CA). As discussed above, other
 27 plaintiffs’ firms also filed tens of thousands of arbitration against Amazon relating to Alexa.
 28

1 72. Amazon has produced over a thousand news articles related to Alexa in connection
 2 with this action. A summary chart containing the beginning bates number, date, source, title, and
 3 description of these items is attached as **Exhibit 52**. Amazon can file the production versions of
 4 each of the underlying articles referenced in the exhibit upon request.

5 **IV. Plaintiffs' Experts**

6 73. On September 5, 2024, Amazon's counsel deposed Jonathan Hochman, one of
 7 Plaintiffs' experts. Attached as **Exhibit 53** is a true and correct copy of an excerpt from
 8 Mr. Hochman's deposition transcript. In his deposition, Mr. Hochman confirmed that he "ha[sn't]
 9 set forth a formula for how someone else would go about calculating an actual numerical value to"
 10 utterances. *Id.* at 99:8-100:7. Mr. Hochman further testified that "[m]y opinion is to state that the
 11 utterances, especially the -- what I'm focusing on, the false-wake utterances, have value," but
 12 "I haven't been asked and I haven't endeavored to -- to fix that value" and "I wasn't asked to -- to
 13 opine about how someone would go about doing that." *Id.* at 115:18-118:22 ("I wasn't asked, first
 14 of all, to fix the value. And I wasn't asked to opine about the relative value of a -- of one utterance
 15 to another.").

16 74. On September 4, 2024, Amazon's counsel deposed David Hoffman, one of
 17 Plaintiffs' experts. Attached as **Exhibit 54** is a true and correct copy of an excerpt from
 18 Mr. Hoffman's deposition transcript. During his deposition, Mr. Hoffman confirmed that he has
 19 not offered any opinion on the value of recordings or a damages model. *Id.* at 194:15-24; *see also*
 20 Carty Ex. PP, ¶ 3.

21 75. On September 6, 2024, Amazon's counsel deposed Serge Egelman, one of
 22 Plaintiffs' experts. Attached as **Exhibit 55** is a true and correct copy of an excerpt from
 23 Dr. Egelman's deposition transcript. During his deposition, Dr. Egelman was asked, "do you
 24 provide any opinion about whether Plaintiffs were deprived of the value of – of recordings or other
 25 data?" and he responded, "I don't believe so." *Id.* at 34:5-10. Dr. Egelman also confirmed that he
 26 was not asked to provide an opinion about quantifying damages and "was not asked to quantify"
 27 any Amazon profits from the retention and use of recordings. *Id.* at 25:2-5, 33:17-21, 34:12-21.
 28

1 76. In his expert report submitted in support of Plaintiffs' Motion for Class
2 Certification, Dr. Egelman notes that Alexa users can "opt out to prevent [recordings] from being
3 retained." Carty Ex. XX, ¶ 36. He concludes that "[o]nly Registrants can opt out via the
4 companion app or website" and children and spouses of Registrants "have no way to opt out." *Id.*
5 In his expert report, Dr. Egelman also cites to a 2019 paper that he co-authored, entitled *Privacy*
6 *Attitudes of Smart Speaker Users ("Privacy Attitudes")*; a true and correct copy of the paper is
7 attached as **Exhibit 56**. According to the *Privacy Attitudes* paper, Dr. Egelman and his co-authors
8 surveyed 116 smart-speaker owners, with 69% of the participants using Alexa-enabled smart
9 speakers and the rest using Google or other smart speakers, and there were "no statistical
10 differences between the two populations on other questions we tested." *Id.* at 254. In contrast to
11 his report in this litigation, Dr. Egelman's 2019 paper reported that household members other than
12 the survey participants may have access to the companion app. Survey participants were asked:
13 "Who in your household has the Amazon Alexa / Google Home app installed on their mobile
14 device and/or linked to the main Amazon/Google account?" *Id.* at 268. The answer choices were:
15 "Only me," "Myself and some of the other members of the household," "Every member of the
16 household," "Someone else in the household, but not me," and "Not sure." *Id.* The paper stated
17 that many participants "mentioned that others in their household also have the Alexa or Google
18 Home app installed." *Id.* at 261.

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct.

21 || Executed this 7th day of October 2024.

/s/ Y. Monica Chan
Y. Monica Chan